

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
WLOS LICENSEE, INC.)	
)	FCC File No. R434269
For Renewal and Reinstatement of License)	
KSH706, Asheville, North Carolina Private)	
Wireless Land Mobile Radio)	
)	
)	

ORDER ON RECONSIDERATION

Adopted: June 26, 2000

Released: June 27, 2000

Before the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On November 17, 1999, WLOS Licensee, Inc. (WLOS), licensee of Station KSH706, Asheville, NC, filed a petition for reconsideration and reinstatement of the above-captioned application (Petition).¹ The Petition seeks reconsideration of the return of WLOS's renewal application as untimely filed² by the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division on November 2, 1999. For the reasons set forth below, we deny the Petition.

2. *Background.* WLOS's license for Station KSH706 expired on September 8, 1999. On October 6, 1999, WLOS submitted the above-captioned application for renewal of license for Station KSH706 to the FCC's Lock Box at Mellon Bank. However, WLOS did not include the correct amount for the filing fee. Consequently, Mellon Bank returned the application to WLOS for insufficient payment.³ On October 27, 1999, WLOS resubmitted the application with the correct fee amount, requesting that the Commission preserve the initial filing date of October 6, 1999. On November 3, 1999, the Branch again returned the application, this time because it was filed past the thirty-day expiration deadline.⁴

3. Last year, the Commission adopted a new policy regarding reinstatement procedures in the wireless services.⁵ Renewal applications that are filed up to thirty days after the expiration date of the

¹ See WLOS Licensee, Inc. Petition for Reconsideration and Reinstatement of Application, filed November 17, 1999 (Petition).

² See Renewal Application Return Notice, dated Nov. 2, 1999.

³ *Id.* Petition at 2.

⁴ Petition at 2. See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11486 ¶ 22 (1999) (*ULS Reconsideration MO&O*).

⁵ *ULS Reconsideration MO&O*, 14 FCC Rcd 11476 (1999).

license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.⁶ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.⁷ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.⁸

4. *Discussion.* We note, as an initial matter, that WLOS's Petition does not address the Commission's policy regarding treatment of late-filed renewal applications. Instead, WLOS states that its failure to include the correct fee amount should not have resulted in the dismissal of its application because the Commission never provided proper public notice of the fee increase.⁹ WLOS argues that even if the fee information was available to the public on the Internet, "such availability does not constitute proper public notice to the public under the Commission's own rules."¹⁰ This argument, however, is unavailing. On September 2, 1999, the Commission released a public notice announcing that changes in the fee requirements would be effective on September 13, 1999.¹¹ Additionally, these changes were identified in the Wireless Telecommunications Bureau Fee Filing Guide and the FCC Form 1070 series of fee information, both of which were publicly available.¹² Consequently, WLOS's argument that the Commission failed to provide adequate public notice of the changes in the fee requirements is without merit.¹³ Applicants must stay apprised of changes in fee requirements and other FCC Rules, and WLOS's failure to do so here is not sufficient to excuse it from timely submitting the appropriate fee.¹⁴ Moreover, Section 1.934 of the Commission's Rules clearly states that applications will be dismissed when not

⁶ *Id.* at 11485 ¶ 22.

⁷ *Id.* at 11486 ¶ 22.

⁸ *Id.* at 11485 ¶ 22.

⁹ Petition at 1.

¹⁰ Petition at 3.

¹¹ The Commission announced that effective September 13, 1999, many of the Wireless Telecommunications Bureau's fee requirements would change. *See* Wireless Telecommunications Bureau Announces Changes to Fee Requirements Effective With Receipts of September 13, 1999, *Public Notice*, dated Sept. 2, 1999. Notice of the change is deemed given as of the date that the public notice is released. 47 C.F.R. § 1.4(b)(2).

¹² *Id.*

¹³ 47 C.F.R. § 1.1115.

¹⁴ *See, e.g.,* Supercom, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 4604, 4607 ¶ 8 (2000) (ignorance of the Commission's Rules is no excuse for noncompliance); Empire Broadcasting Corp., *Memorandum Opinion and Order*, 25 FCC2d 68, 69 ¶ 4 (1970) (mere oversight or failure to be aware of the Commission's requirements will not excuse licensee from its obligation to operate in compliance with the Commission's Rules).

submitted with the appropriate fee.¹⁵

5. In addition, notwithstanding WLOS's failure to submit the appropriate fee, its Petition would also fail the stricter standard of review required by the Commission's policy for treatment of renewal requests filed more than thirty days after the license expiration date.¹⁶ WLOS's subject license expired on September 8, 1999, and it did not file a corrected renewal application with the appropriate fee until October 27, 1999. In determining whether to grant a late-filed renewal application *nunc pro tunc*, we must consider all the facts and circumstances. In the instant case, and for the reasons previously stated, we are not persuaded that WLOS's argument warrants us renewing its license *nunc pro tunc*. WLOS has failed to state its reasons for not filing its renewal application in a timely manner. In the absence of such showing, we conclude that WLOS has not made the requisite showing to support renewal of the subject license *nunc pro tunc*. Thus, we affirm the Branch's treatment of WLOS's late-filed renewal application.

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), and 405, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration and reinstatement of application filed by WLOS Licensee, Inc. on November 17, 1999, IS DENIED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁵ 47 C.F.R. § 1.934(d) (1999). *See also* Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, *Memorandum Opinion and Order*, Gen. Docket No. 86-285, 5 FCC Rcd 3558, 3570 ¶ 25 (1990).

¹⁶ *ULS Reconsideration MO&O*, 14 FCC Rcd 11476, 11486 ¶ 22.